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KIMBERLY KARDASHIAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

TRIA BEAUTY, INC., Plaintiff,

v.

RADIANCY, INC., Defendant,

RADIANCY, INC., Counter-claimant

v.

TRIA BEAUTY, INC., Counter-defendant,

and

KIMBERLY KARDASHIAN, Counter-defendant

Case No. 10-cv-05030-RS

**COUNTER-DEFENDANT
KIMBERLY KARDASHIAN'S
ANSWER TO RADIANCY'S
AMENDED COUNTERCLAIMS**

Honorable Judge Seeborg
Honorable Magistrate Judge Vadas

Counter-defendant Kimberly Kardashian, by and through her attorneys, Ropes & Gray LLP and Kinsella Weitzman Iser Kump & Aldisert LLP, hereby answers the First Amended Counterclaims of Defendant-Counterclaimant Radiancy, Inc. (“Radiancy”).

1. Ms. Kardashian admits that Radiancy has filed Amended Counterclaims which purport to assert counterclaims under federal and state law against TRIA Beauty, Inc. (“TRIA”) arising from allegedly false or misleading advertising for TRIA’s laser hair removal and acne treatment systems, and also purport to assert claims against Ms. Kardashian arising from allegedly false or misleading advertising for TRIA’s laser hair removal system (collectively, the “Amended Counterclaims”), but otherwise denies the allegations in paragraph 1 of the Amended Counterclaims.

2. Ms. Kardashian denies the allegations of paragraph 2 of the Amended Counterclaims.

3. On information and belief, Ms. Kardashian admits the allegations of paragraph 3 of the Amended Counterclaims.

4. On information and belief, Ms. Kardashian admits the allegations of paragraph 4 of the Amended Counterclaims.

5. Ms. Kardashian admits the allegations of paragraph 5 of the Amended Counterclaims.

6. Ms. Kardashian admits that, in its Amended Counterclaims, Radiancy has made allegations that invoke the jurisdiction of this court, but otherwise lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 6 of the Amended Counterclaims and therefore denies them.

7. Ms. Kardashian lacks sufficient knowledge or information to admit or deny the allegations of paragraph 7 of the Amended Counterclaims.

8. Ms. Kardashian admits that, in its Amended Counterclaims, Radiancy has made allegations that invoke the jurisdiction of this court, but denies that Radiancy is entitled to damages in any amount, including an amount in excess of \$75,000, and otherwise lacks

1 sufficient knowledge or information to form a belief as to the truth of the remaining allegations
2 in paragraph 8 of the Amended Counterclaims and therefore denies them.

3 9. Ms. Kardashian lacks sufficient knowledge or information to admit or deny the
4 allegations of paragraph 9 of the Amended Counterclaims, but for purposes of this action,
5 stipulates to the personal jurisdiction of this Court over her.

6 10. Ms. Kardashian lacks sufficient knowledge or information to admit or deny the
7 allegations of paragraph 10 of the Amended Counterclaims.

8 11. Ms. Kardashian lacks sufficient knowledge or information to admit or deny the
9 allegations of paragraph 11 of the Amended Counterclaims, but for purposes of this action,
10 stipulates that this District is a proper venue with regard to the claims asserted against her in the
11 Amended Counterclaims.

12 12. Ms. Kardashian denies that any “events or omissions” occurred in this, or any
13 other, judicial District that would have given rise to any of the asserted Amended
14 Counterclaims. However, for purposes of this action Ms. Kardashian stipulates that assignment
15 of this action to the San Francisco Division is proper under Civil L.R. § 3-2(c).

16 13. Ms. Kardashian lacks sufficient knowledge or information to admit or deny the
17 allegations of paragraph 13 of the Amended Counterclaims.

18 14. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
19 the truth of the facts alleged in paragraph 14 of the Amended Counterclaims.

20 15. Ms. Kardashian admits that TRIA markets and sells a hair removal product called
21 the TRIA Laser Hair Removal System (“TRIA Hair”), but lacks knowledge or information
22 sufficient to form a belief as to the truth of the remainder of the facts alleged in paragraph 15 of
23 the Amended Counterclaims.

24 16. Ms. Kardashian admits that the TRIA Hair consists of, among other things, a
25 laser light source contained within a plastic housing.

26 17. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
27 the truth of the facts alleged in paragraph 17 of the Amended Counterclaims.
28

1 18. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 18 of the Amended Counterclaims.

3 19. Ms. Kardashian admits that the TRIA Hair is available for sale on TRIA's
4 website and through other third party retailers, but lacks knowledge or information sufficient to
5 form a belief as to the truth of the remainder of the facts alleged in paragraph 19 of the
6 Amended Counterclaims.

7 20. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
8 the truth of the facts alleged in paragraph 20 of the Amended Counterclaims.

9 21. Ms. Kardashian admits that TRIA has conducted an advertising campaign
10 involving appearances by paid spokespersons on various television talk shows and news shows
11 to the extent she herself has been involved in such advertising, but lacks knowledge or
12 information sufficient to form a belief as to the truth of the other facts alleged in paragraph 21 of
13 the Amended Counterclaims.

14 22. On information and belief, Ms. Kardashian denies that TRIA's labeling and
15 advertising for TRIA Hair is false or misleading as alleged in paragraph 22 of the Amended
16 Counterclaims.

17 23. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
18 the truth of the facts alleged in paragraph 23 of the Amended Counterclaims.

19 24. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
20 the truth of the facts alleged in paragraph 24 of the Amended Counterclaims.

21 25. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
22 the truth of the facts alleged in paragraph 25 of the Amended Counterclaims regarding what
23 TRIA's packaging and labeling currently states.

24 26. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
25 the truth of the facts alleged in paragraph 26 of the Amended Counterclaims.

26 27. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
27 the truth of the facts alleged in paragraph 27 of the Amended Counterclaims.
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1 28. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 28 of the Amended Counterclaims.

3 29. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
4 the truth of the facts alleged in paragraph 29 of the Amended Counterclaims.

5 30. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
6 the truth of the facts alleged in paragraph 30 of the Amended Counterclaims.

7 31. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
8 the truth of the facts alleged in paragraph 31 of the Amended Counterclaims.

9 32. On information and belief, Ms. Kardashian denies the allegations in paragraph 32
10 of the Amended Counterclaims.

11 33. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
12 the truth of the facts alleged in paragraph 33 of the Amended Counterclaims.

13 34. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
14 the truth of the facts alleged in paragraph 34 of the Amended Counterclaims.

15 35. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
16 the truth of the facts alleged in paragraph 35 of the Amended Counterclaims.

17 36. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
18 the truth of the facts alleged in paragraph 36 of the Amended Counterclaims.

19 37. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
20 the truth of the facts alleged in paragraph 37 of the Amended Counterclaims.

21 38. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
22 the truth of the facts alleged in paragraph 38 of the Amended Counterclaims.

23 39. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
24 the truth of the facts alleged in paragraph 39 of the Amended Counterclaims.

25 40. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
26 the truth of the facts alleged in paragraph 40 of the Amended Counterclaims.

27 41. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
28 the truth of the facts alleged in paragraph 41 of the Amended Counterclaims.

1 42. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 42 of the Amended Counterclaims.

3 43. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
4 the truth of the facts alleged in paragraph 43 of the Amended Counterclaims.

5 44. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
6 the truth of the facts alleged in paragraph 44 of the Amended Counterclaims.

7 45. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
8 the truth of the facts alleged in paragraph 45 of the Amended Counterclaims regarding what
9 TRIA's packaging currently states.

10 46. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
11 the truth of the facts alleged in paragraph 46 of the Amended Counterclaims regarding what
12 TRIA's packaging currently states.

13 47. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
14 the truth of the facts alleged in paragraph 47 of the Amended Counterclaims regarding what
15 TRIA's packaging and Instructions for Use currently state.

16 48. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
17 the truth of the facts alleged in paragraph 48 of the Amended Counterclaims.

18 49. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
19 the truth of the facts alleged in paragraph 49 of the Amended Counterclaims.

20 50. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
21 the truth of the facts alleged in paragraph 50 of the Amended Counterclaims.

22 51. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
23 the truth of the facts alleged in paragraph 51 of the Amended Counterclaims.

24 52. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
25 the truth of the facts alleged in paragraph 52 of the Amended Counterclaims.

26 53. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
27 the truth of the facts alleged in paragraph 53 of the Amended Counterclaims.
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1 54. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 54 of the Amended Counterclaims.

3 55. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
4 the truth of the facts alleged in paragraph 55 of the Amended Counterclaims.

5 56. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
6 the truth of the facts alleged in paragraph 56 of the Amended Counterclaims.

7 57. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
8 the truth of the facts alleged in paragraph 57 of the Amended Counterclaims.

9 58. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
10 the truth of the facts alleged in paragraph 58 of the Amended Counterclaims.

11 59. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
12 the truth of the facts alleged in paragraph 59 of the Amended Counterclaims.

13 60. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
14 the truth of the facts alleged in paragraph 60 of the Amended Counterclaims.

15 61. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
16 the truth of the facts alleged in paragraph 61 of the Amended Counterclaims.

17 62. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
18 the truth of the facts alleged in paragraph 62 of the Amended Counterclaims.

19 63. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
20 the truth of the facts alleged in paragraph 63 of the Amended Counterclaims.

21 64. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
22 the truth of the facts alleged in paragraph 64 of the Amended Counterclaims.

23 65. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
24 the truth of the facts alleged in paragraph 65 of the Amended Counterclaims.

25 66. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
26 the truth of the facts alleged in paragraph 66 of the Amended Counterclaims.

27 67. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
28 the truth of the facts alleged in paragraph 67 of the Amended Counterclaims.

1 68. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 68 of the Amended Counterclaims.

3 69. Ms. Kardashian admits the allegations of paragraph 69 of the Amended
4 Counterclaims.

5 70. Ms. Kardashian admits that she has promoted the TRIA Hair on talk shows, in
6 interviews, and in her Twitter feed, pursuant to her contract with TRIA. Except as specifically
7 admitted, Ms. Kardashian denies the allegations of paragraph 70 of the Amended
8 Counterclaims.

9 71. Ms. Kardashian admits that she appeared on “The Early Show” and promoted the
10 TRIA Hair, pursuant to her contract with TRIA, and that the quoted word referenced in
11 paragraph 71 of the Amended Counterclaims is a partial and incomplete statement of her
12 comments, but denies any characterization of that word by Radiancy, and denies the remainder
13 of the allegations of paragraph 71 of the Amended Counterclaims.

14 72. Ms. Kardashian admits that she appeared on the Rachael Ray show and promoted
15 the TRIA Hair, pursuant to her contract with TRIA, and that the quoted words referenced in
16 paragraph 72 of the Amended Counterclaims are a partial and incomplete statement of her
17 comments, but denies any characterization of those words by Radiancy, and denies the
18 remainder of the allegations of paragraph 72 of the Amended Counterclaims.

19 73. Ms. Kardashian admits that she appeared on the Rachael Ray show and promoted
20 the TRIA Hair, pursuant to her contract with TRIA. Except as specifically admitted, Ms.
21 Kardashian denies the allegations of paragraph 73 of the Amended Counterclaims.

22 74. Ms. Kardashian admits that she appeared on the Wendy Williams show and
23 promoted the TRIA Hair, pursuant to her contract with TRIA. Except as specifically admitted,
24 Ms. Kardashian denies the remainder of the allegations of paragraph 74 of the Amended
25 Counterclaims.

26 75. Ms. Kardashian admits that she appeared on the Wendy Williams show and
27 promoted the TRIA Hair, pursuant to her contract with TRIA, and that the quoted words
28 referenced in paragraph 75 of the Amended Counterclaims are a partial and incomplete

1 statement of her comments, but denies any characterization of those words by Radiancy, and
2 denies the remainder of the allegations of paragraph 75 of the Amended Counterclaims.

3 76. Ms. Kardashian admits that she appeared on the Wendy Williams show and
4 promoted the TRIA Hair, pursuant to her contract with TRIA, and that the quoted words
5 referenced in paragraph 76 of the Amended Counterclaims are a partial and incomplete
6 statement of her comments, but denies any characterization of those words by Radiancy, and
7 denies the remainder of the allegations of paragraph 76 of the Amended Counterclaims.

8 77. Ms. Kardashian admits that she appeared on Fox News and promoted the TRIA
9 Hair, pursuant to her contract with TRIA, and that the quoted phrase “first FDA cleared product
10 in laser hair removal” in paragraph 77 of the Amended Counterclaims is a partial and
11 incomplete statement of her comments, but denies any characterization of that phrase or her
12 other comments by Radiancy, and lacks sufficient knowledge or information to admit or deny
13 the remaining allegations of paragraph 77 of the Amended Counterclaims.

14 78. Ms. Kardashian admits that she promoted the TRIA Hair on Twitter, pursuant to
15 her contract with TRIA, and that the quoted words have been used in a Twitter posting as
16 referenced in paragraph 78 of the Amended Counterclaims, but lacks knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations of paragraph 78 of the
18 Amended Counterclaims.

19 79. Ms. Kardashian denies the allegations of paragraph 79 of the Amended
20 Counterclaims.

21 80. Ms. Kardashian denies the allegations of paragraph 80 of the Amended
22 Counterclaims.

23 81. Ms. Kardashian admits that she appeared on the Wendy Williams show and
24 promoted the TRIA Hair, pursuant to her contract with TRIA. Except as specifically admitted,
25 Ms. Kardashian denies the allegations of paragraph 81 of the Amended Counterclaims.

26 82. Ms. Kardashian admits that she appeared on the Wendy Williams show and
27 promoted the TRIA Hair, pursuant to her contract with TRIA, but denies any characterization of
28 her comments by Radiancy. Ms. Kardashian lacks knowledge or information sufficient to form

1 a belief as to the truth of the facts alleged in paragraph 82 of the Amended Counterclaims
2 regarding what TRIA's Instructions for Use currently state.

3 83. Ms. Kardashian admits that she promoted the TRIA Hair on Twitter, pursuant to
4 her contract with TRIA, but denies any characterization of her alleged acts and statements by
5 Radiancy. Ms. Kardashian admits that the quoted words referenced in paragraph 83 of the
6 Amended Counterclaims were posted to her Twitter feed, but denies any characterization by
7 Radiancy of those words, and lacks knowledge and information sufficient to admit the
8 remainder of the allegations of paragraph 83 of the Amended Counterclaims.

9 84. Ms. Kardashian admits that she appeared on The Early Show and the Rachael
10 Ray Show and promoted the TRIA Hair, pursuant to her contract with TRIA, but denies any
11 characterization of her alleged acts and statements by Radiancy, and denies the remainder of the
12 allegations of paragraph 84 of the Amended Counterclaims.

13 85. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations of paragraph 85 of the Amended Counterclaims, and therefore denies
15 the same.

16 86. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
17 the truth of the allegations of paragraph 86 of the Amended Counterclaims, and therefore denies
18 the same.

19 87. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of paragraph 87 of the Amended Counterclaims.

21 88. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations of paragraph 88 of the Amended Counterclaims.

23 89. Ms. Kardashian denies the allegations of paragraph 89 of the Amended
24 Counterclaims.

25 90. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
26 the truth of the facts alleged in paragraph 90 of the Amended Counterclaims.

27 91. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
28 the truth of the facts alleged in paragraph 91 of the Amended Counterclaims.

1 92. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 92 of the Amended Counterclaims.

3 93. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
4 the truth of the facts alleged in paragraph 93 of the Amended Counterclaims.

5 94. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
6 the truth of the facts alleged in paragraph 94 of the Amended Counterclaims.

7 95. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
8 the truth of the facts alleged in paragraph 95 of the Amended Counterclaims.

9 96. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
10 the truth of the facts alleged in paragraph 96 of the Amended Counterclaims.

11 97. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
12 the truth of the facts alleged in paragraph 97 of the Amended Counterclaims.

13 98. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
14 the truth of the facts alleged in paragraph 98 of the Amended Counterclaims.

15 99. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
16 the truth of the facts alleged in paragraph 99 of the Amended Counterclaims.

17 100. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
18 the truth of the facts alleged in paragraph 100 of the Amended Counterclaims.

19 101. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
20 the truth of the facts alleged in paragraph 101 of the Amended Counterclaims.

21 102. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
22 the truth of the facts alleged in paragraph 102 of the Amended Counterclaims.

23 103. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
24 the truth of the facts alleged in paragraph 103 of the Amended Counterclaims.

25 104. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
26 the truth of the facts alleged in paragraph 104 of the Amended Counterclaims.

27 105. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
28 the truth of the facts alleged in paragraph 105 of the Amended Counterclaims.

1 106. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
2 the truth of the facts alleged in paragraph 106 of the Amended Counterclaims.

3 107. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
4 the truth of the facts alleged in paragraph 107 of the Amended Counterclaims.

5 108. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
6 the truth of the facts alleged in paragraph 108 of the Amended Counterclaims.

7 109. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
8 the truth of the facts alleged in paragraph 109 of the Amended Counterclaims.

9 110. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
10 the truth of the facts alleged in paragraph 110 of the Amended Counterclaims.

11 111. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
12 the truth of the facts alleged in paragraph 111 of the Amended Counterclaims.

13 112. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
14 the truth of the facts alleged in paragraph 112 of the Amended Counterclaims.

15 113. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
16 the truth of the facts alleged in paragraph 113 of the Amended Counterclaims.

17 114. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
18 the truth of the facts alleged in paragraph 114 of the Amended Counterclaims.

19 115. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
20 the truth of the facts alleged in paragraph 115 of the Amended Counterclaims.

21 116. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
22 the truth of the facts alleged in paragraph 116 of the Amended Counterclaims.

23 117. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
24 the truth of the facts alleged in paragraph 117 of the Amended Counterclaims.

25 118. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
26 the truth of the facts alleged in paragraph 118 of the Amended Counterclaims.

27 119. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to
28 the truth of the facts alleged in paragraph 119 of the Amended Counterclaims.

120. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 120 of the Amended Counterclaims.

121. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 121 of the Amended Counterclaims.

122. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 122 of the Amended Counterclaims.

123. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 123 of the Amended Counterclaims.

124. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 124 of the Amended Counterclaims.

125. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 125 of the Amended Counterclaims.

126. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 126 of the Amended Counterclaims.

127. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 127 of the Amended Counterclaims.

128. Ms. Kardashian lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 128 of the Amended Counterclaims.

Count I

[Count I is not asserted against Ms. Kardashian]

129. To the extent relevant to Counts II and III asserted against her, Ms. Kardashian incorporates by reference and re-alleges her answers to the allegations of paragraphs 1 through 128 of the Amended Counterclaims.

130. To the extent this paragraph is incorporated in Counts II and III asserted against Ms. Kardashian, she denies the allegations of paragraph 130 of the Amended Counterclaims.

131. To the extent this paragraph is incorporated in Counts II and III asserted against Ms. Kardashian, she denies the allegations of paragraph 131 of the Amended Counterclaims.

1 132. To the extent this paragraph is incorporated in Counts II and III asserted against
2 Ms. Kardashian, she denies the allegations of paragraph 132 of the Amended Counterclaims.

3 133. To the extent this paragraph is incorporated in Counts II and III asserted against
4 Ms. Kardashian, she denies the allegations of paragraph 133 of the Amended Counterclaims.

5 134. To the extent this paragraph is incorporated in Counts II and III asserted against
6 Ms. Kardashian, she denies the allegations of paragraph 134 of the Amended Counterclaims.

7 135. To the extent this paragraph is incorporated in Counts II and III asserted against
8 Ms. Kardashian, she denies the allegations of paragraph 135 of the Amended Counterclaims.

9 136. To the extent this paragraph is incorporated in Counts II and III asserted against
10 Ms. Kardashian, she denies the allegations of paragraph 136 of the Amended Counterclaims.

11 **Count II**

12 137. Ms. Kardashian incorporates by reference and re-alleges her answers to the
13 allegations of paragraphs 1 through 136 of the Amended Counterclaims.

14 138. Ms. Kardashian denies the allegations of paragraph 138 of the Amended
15 Counterclaims.

16 139. Ms. Kardashian denies the allegations of paragraph 139 of the Amended
17 Counterclaims.

18 140. Ms. Kardashian denies the allegations of paragraph 140 of the Amended
19 Counterclaims.

20 141. Ms. Kardashian denies the allegations of paragraph 141 of the Amended
21 Counterclaims.

22 **Count III**

23 142. Ms. Kardashian incorporates by reference and re-alleges her answers to the
24 allegations of paragraphs 1 through 141 of the Amended Counterclaims.

25 143. Ms. Kardashian denies the allegations of paragraph 143 of the Amended
26 Counterclaims.

27 144. Ms. Kardashian denies the allegations of paragraph 144 of the Amended
28 Counterclaims.

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FOURTH AFFIRMATIVE DEFENSE

The allegations and claims in the Amended Counterclaims are barred, in whole or in part, because Radiancy’s Counterclaims have been filed for an improper purpose and lack a reasonable good faith basis in fact.

FIFTH AFFIRMATIVE DEFENSE

The allegations and claims in the Amended Counterclaims are barred to the extent they are preempted by federal law.

SIXTH AFFIRMATIVE DEFENSE

The allegations and claims in the Amended Counterclaims are barred to the extent they fall within the primary jurisdiction of the FDA, the FTC and/or other federal agencies.

SEVENTH AFFIRMATIVE DEFENSE

The claims for damages in the Amended Counterclaims are barred, in whole or in part, because they are too remote and/or speculative.

EIGHTH AFFIRMATIVE DEFENSE

The alleged conduct and statements by Ms. Kardashian in the Amended Counterclaims were performed in reliance upon and pursuant to her contract with and instructions and information from TRIA.

NINTH AFFIRMATIVE DEFENSE

At the time of the alleged conduct and statements by Ms. Kardashian in the Amended Counterclaims, and since then, Ms. Kardashian has had no information indicating, or any other reason to believe, that any of the information regarding the TRIA Hair was false.

TENTH AFFIRMATIVE DEFENSE

At the time of the alleged conduct and statements by Ms. Kardashian in the Amended Counterclaims, and since then, Ms. Kardashian has had no knowledge of any material misrepresentation about the TRIA Hair.

ELEVENTH AFFIRMATIVE DEFENSE

At the time of the alleged conduct and statements by Ms. Kardashian in the Amended Counterclaims, and since then, Ms. Kardashian has had no information indicating, or any other

1 reason to believe, that any of the information regarding the TRIA Hair was materially
2 misrepresented.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 At all times, Ms. Kardashian's conduct and statements regarding the TRIA Hair
5 reflected her good faith belief and opinions, and there was reasonable substantiation for such
6 conduct and statements.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 At all times, Ms. Kardashian's conduct and statements regarding the TRIA Hair have
9 conformed to applicable law and regulations.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 Ms. Kardashian reserves the right to rely on all matters constituting an avoidance or
12 defense pursuant to Rule 8(c) of the Federal Rules of Civil Procedure or otherwise to the extent
13 that such defenses are supported by information developed through discovery.

14 **PRAYER FOR RELIEF**

15 WHEREFORE Ms. Kardashian seeks relief as follows:

16 A. That the Court render judgment in favor of Ms. Kardashian on each of the claims
17 and Counts set forth in the Amended Counterclaims;

18 B. That the Court direct that Radiancy pay Ms. Kardashian the costs and reasonable
19 attorneys' fees incurred by Ms. Kardashian in defense of the Amended Counterclaims; and

20 C. That the Court grant Ms. Kardashian such other and further relief as the Court
21 may deem just and proper.

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October 17, 2011

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ROPES & GRAY LLP

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